Supreme Court, U.S.
FILED

(1) No. 98 47 JUL 2 = 1998

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In The

Supreme Court of the United States

October Term, 1997

WILLIAM DOYLE WOOD,

Petitioner

v.

CITY COUNCIL OF MANASSAS, VIRGINIA,

and

THE BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY,

and

MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD

On Petition For Writ Of Certiorari
To The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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30pp

QUESTIONS PRESENTED FOR REVIEW

1) May the trial court make a finding of fact without hearing evidence that alleged acts of nuisance, trespass, and inverse condemnation constituting a conspiracy and a physical invasion of property in violation of Amendments V and XIV of the Constitution of the United States of America, are preliminary activities involving planning in order to sustain a demurrer and to dismiss this case with prejudice, denying the petitioner a trial and any opportunity to present evidence in violation of Amendments V and XIV of the Constitution of the United States of America?

2) May the trial court dismiss the petitioner's case for failure to give notice of an "account" pursuant to Code of Virginia – Section 15.1-550 prior to filing for claims of a proprietary nature alleging nuisance, trespass, and inverse condemnation in violation of Amendments V and XIV of the Constitution of the United States of America and dismiss the matter with prejudice and without leave to amend or the opportunity comply with procedural requirements, denying the plaintiff a trial or any adjudication of his rights in violation of Amendments V and XIV of the Constitution of the United States of America?

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Williamson County Regional Planning Commission v. *Hamilton Bank*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed 2d 126 (1985) — 8, 9

CITATION OF REPORTS

There are no official or unofficial reports of the orders entered in this case. Copies of the Orders of the Circuit Court of Prince William County, Virginia and the Supreme Court of Virginia are attached in the Appendix.

BASIS OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to § 28 U.S.C 1257 based upon the dismissal of the case without a hearing denying the petitioner's rights under Amendments V and XIV of the Constitution of the United States of America on September 5, 1997 and the refusal of the Petition for Appeal by the Supreme Court of Virginia on April 3, 1998.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES OF AMERICA AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor

shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT XIV
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

CODE OF VIRGINIA SECTION 15.1-550

§ 15.1-550. No account shall be allowed by the board of supervisors unless the same shall be made out in separate items and the nature of each item specifically stated, and, when no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account shall be verified by affidavit, to be filed therewith. The attorney for the Commonwealth, or the county attorney in those counties which have

created the offfice of county attorney, shall represent the county before the board and shall advise the board of any claim which in his opinion is illegal or not before the board in proper form, and upon proper proof, or which for any other reason ought not to be allowed. When any claim has been allowed by the board against the county which in the opinion of such attorney, or any six freeholders of the county is improper as to form or proof or illegal, he shall seek the advice of the Attorney General as to legality or the State Auditor of Public Accounts as to matters of accounting, or such freeholders may appeal the decision of the board to the circuit court of the county. If either the Attorney General or the State Auditor of Public Accounts is of the opinion the claim is illegal or in improper form, the attorney for the Commonwealth shall appeal from the decision of the board to the circuit court of the county. In any event of any such appeal, the moving party shall cause a written notice thereof to be served on the clerk of the board and the party in whose favor the claim is allowed within thirty days after the making of such decision. If the court finds and states in its order that the claim was improperly allowed but that the consideration received or to be received by the county for payments made or to be made was or will be for value, it shall dismiss the appeal. If the court finds otherwise, it shall remand the claim to the board of supervisors for appropriate action. Whenever any claim allowed by the board is declared illegal by a court of competent

juridiction, the attorney for the Commonwealth, or the county attorney in those counties which have created the office of county attorney, in the name of the county, shall institute proper proceedings in the circuit court of his count within two years for the entry of the order allowing the same, if such amount has already been paid. The attorney for the Commonwealth, or the county attorney in those counties which have created the office of county attorney, shall be available to the board and hive his legal opinion when requested. (Code 1950, § 15.-257; 1962, c. 623; 1968, c. 450; 1980, c. 58;1982, c. 173; 1984, c. 617.)

CODE OF VIRGINIA SECTION 15.1-554

§ 15.1-554. No action shall be maintained by any person against a county upon any claim or demand until such person shall have first presented his claim the board of supervisors of such county for allowance, unless the governing body of the county has entered into a binding arbitration agreement or there is a provision in a written contract with the county to submit to arbitration any controversy thereafter arising. When there exists such a provision in a contract or there is a written agreement to arbitrate, the provisions of the Uniform Arbitration Act, Article 2 (§ 8.01-581.01 et seq.) of Chapter 21 of Title 8.01, shall apply. (Code 1950, § 15-261; 1962, c. 623; 1987, c. 483.)

STATEMENT OF THE CASE

The plaintiff, William Doyle Wood, alleged takings by conspiracy, nuisance, trespass, inverse condemnation, and physical invasion of his property by the City Council of Manassas, Virginia, the Board of Supervisors of Prince William County, Virginia, and the Manassas Regional Airport Administration Board by reason of the creation of a runway protection zone for and low level overflights of his abutting property into and out of the Manassas Regional Airport and other related activities constituting an all use taking of his property in violation of Amendments V and XIV of the Constitution of the United States of America.

At the hearing on the Demurrers and Pleas in Bar filed by the defendants the Circuit Court of Prince William County, Virginia ruled that Wood's noncompliance with the notice provisions of Section 15.1-550 of the Code of Virginia required dismissal with prejudice as to the Board of Supervisors of Prince William County, Virginia and made a finding of fact that the actions of the City Council of Manassas, Virginia and the Manassas Regional Airport Administration Board were preliminary activities which required dismissal with prejudice of the action as to them. The petitioner contended on appeal that these rulings deprived him of his property

without due process of law citing *First English Evangelical Lutheran Church* v. *Los Angeles* 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed 2d 2500 (1987).

The Supreme Court of Virginia ruled on April 3, 1998 that there was no reversible error in the judgment complained of.

ARGUMENT FOR ALLOWANCE OF A WRIT OF CERTIORARI

In his pleading filed in the Circuit Court of Prince William County, Virginia, Wood has alleged causes of actions for conspiracy, inverse condemnation, nuisance, and trespass. The facts alleged are summarized as follows: a conspiracy under color of state and local laws to harm him in his trade or profession; the identification and designation of noise overlay areas, which admitted the existence of sound nuisances; the formulation of an application to the FAA of noise exposure maps; the encouragement of increased business on the Airport: the creation of an RPZ. Runway Protection Zone; the expansion of the LDN 65 area in which the noise reached 65 decibels or more in a twenty-four hour period; the encouragement by the City and County of limited residential building in the County near the Airport; studies which eventually led to the acts complained of therein and the eventual deprivation of Wood's vested property rights;

appraisals of the Wood property and other properties; and introduction of helicopter traffic.

The trial court accepted evidence in the form of an affidavit as to the ownership and operation of the airport but based its ruling on the fact that the acts complained of were "preliminary activities."

This decision apparently arises from the holding of the U.S. Supreme Court in *Danforth v. United States*, 308 U.S. 271, 60 S.Ct. 231 84 L. Ed 240 (1939) involving the enactment of flood control legislation and *Agins v. Tiburon*, 447 U.S. 255, 100 S. Ct. 2138, 65. L. ED. 2d 106 (1980) involving enactment of zoning ordinances. While both of these were deemed not to be takings, this doctrine appears to have been severely eroded if not overruled by the holding in *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed 2d 250 (1987).

The petitioner contends that the apparent judicial notice taken by the trial court as to the facts alleged being "preliminary activities" is obvious error and contravenes the holding of the Supreme Court of the United States of America in *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed 2d 250 (1987). This case held clearly that any taking which denies a landowner all use of his property requires compensation under the Constitution of the United States of America.

The trial court in this case ruled without hearing any evidence that all activities by the defendants were "preliminary activities" and required dismissal. No authority was cited for this and Wood contends that none exists. Logically all activities are preliminary to something else and at this point Wood has alleged a taking of all uses of his property sufficient to meet the test of *Lucas v. South Carolina Costal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed 2d 798 (1992) that required compensation where the activities complained of deprived him of all economically viable use of his property and therefore effected a taking.

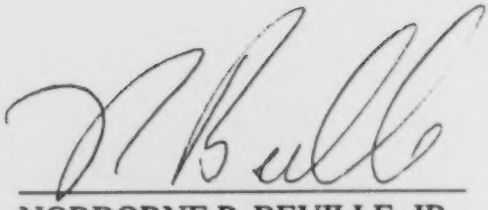
The trial court further dismissed the action as to the Board of Supervisors of Prince William County, Virginia for failure to give notice to the Board as required by Code of Virginia Sections 15.1-550 and 15.1-554. This dismissal was with prejudice and without leave to amend and effectively denied Wood any option to give notice and refile, thus denying his right to be heard in violation of Amendments V and XIV of the Constitution of the United States of America.

The ruling assumes that the petitioner had an "account" with the Board but also required him to submit a claim to the very party whose actions he was complaining of. Although the case of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S. Ct. 3108, 87L. Ed 2d 126 (1985) requires exhaustion of state remedies, the trial court's dismissal of the matter

with prejudice and without leave to amend or refile clearly constitutes a final decision and allows the petitioner to appeal as held in this case.

Petitioner William Doyle Wood has alleged in his initial pleading a deprivation of all use of his property and a taking requiring compensation under Amendments V and XIV of the Constitution of the United States of America. By its ruling sustained by the Supreme Court of Virginia that these were preliminary activities the trial court denied the landowner Wood compensation and even the right to present evidence. This Court should declare such actions in violation of the Constitution of the United States of America and the case should be remanded for further proceedings.

RESPECTFULLY SUBMITTED
William Doyle Wood
By Counsel



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APPENDIX

A2. Order Circuit Court of Prince William County, Virginia September 5, 1997

A8. Order Supreme Court of Virginia April 3, 1998

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

WILLIAM DOYLE WOOD,	)	
	)	
Plantiff,	)	
	)	
v.	)	LA: 43132
	)	
CITY COUNCIL OF MANASSAS, VIRGINIA et al.,	)	
	)	
Defendants,	)	
	)	

ORDER

THIS CAUSE, came to be heard on the Plea In Bar and Demurrer of the City Council of Manassas, Virginia and Manassas Regional Airport Administration Board as well as the Plea In Bar and Demurrer of the County of Prince William. For the reasons stated from the bench on August 15, 1997, it appears that the Demurrer of Prince William County should be granted because the plaintiff did not comply with the requirements of Sections 15.1-550 through 15.1-554, *Code of Virginia*, for plaintiff's monetary claims for compensation based on inverse condemnation, nuisance and trespass,

and the Demurrer of the City Council of Manassas, Virginia and the Manassas Regional Airport Administration Board should be granted because the only activity engaged in by these defendants was preliminary activity which was not actionable by William Doyle Wood. Accordingly,

IT IS ORDERED, that the Motion for Judgment, Petition In Inverse Condemnation And For Declaratory Judgment of William Doyle Wood should be dismissed with prejudice and without leave to amend.

THIS IS A FINAL ORDER.

ENTERED this 5th day of September, 1997.

BK0157PG1021

"s/Herman A. Whisenant"
Herman A. Whisenant, Jr., Judge

WE ASK FOR THIS:

"s/J W Boykin"
Jerry William Boykin (VSB #15056)
Redmon, Boykin & Braswell, LLP
510 King St., Suite 301
Alexandria, VA 22314

Counsel for Defendants
CITY COUNCIL OF MANASSAS, VIRGINIA
& MANASSAS REGIONAL AIRPORT ADMINSTRATION BOARD

"s/Robert B. Dickerson"
Robert B. Dickerson, Asst. County Attorney
Office of Prince William County Attorney
1 County Complex Court
Prince William, VA 22192

Counsel for Defendant
PRINCE WILLIAM COUNTY

BK0157PG1022

SEEN AND OBJECTED TO AND EXCEPTIONS NOTED:

"s/N. Beville"
Norborne P. Beville, Jr., Esq.
9305 Grant Ave.
Manassas, VA 20110-5064

Counsel for Plaintiff
WILLIAM DOYLE WOOD

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

WILLIAM DOYLE WOOD,

Plaintiff,

v. Law No. 43132

CITY COUNCIL OF MANASSAS, VIRGINIA, et al

Defendants.

EXCEPTION

The plaintiff, William Doyle Wood by counsel, excepts to the Court's ruling of August 15, 1997, upon the following grounds.

1. The Court dismissed this matter as to the City Council and the Airport Board upon the basis that plaintiff's Motion for Judgment alleges preliminary activities about the planning for the taking of the land and the runway.

The effect of this ruling appears to be that only an actual physical occupation of ground itself would be compensable and that these alleged actions are not compensable.

Counsel for the City and Board cited the case of *First English Evangelical Lutheran Church v. Los Angels 482 U.S. 304, 107 S.Ct. 2378, 46 L.Ed 2d 250 (1987)*. Plaintiff reads this case to support the proposition that even a temporary taking which denies him of all use of

his property is compensable. This case discusses preliminary activities only in the cases of *Danforth v. United States 308 U.S. 271, 60 S. Ct 231 84 L Ed. 240 (1939)*, which held that enactment of flood control legislation was not a taking and *Agins v. Tiburon 447 US 255, 100 S.Ct 2138, 65 L Ed. 2d 106 (1980)*, which involved enactment of zoning ordinances and was deemed not a taking.

At this point there is no allegation or evidence that the activities of defendants including violation of federal regulations were preliminary to anything and plaintiff excepts to the Court's ruling in this regard.

2. The Court dismissed the action against the County for failure to comply with §15.1-550 and thereafter while the plaintiff has presented argument as to that and again notes his exceptions, he also contends that the dismissal cannot be with prejudice. The County cites *Parker v. Prince William County, 198 Va. 231, 935 E 2d 136 (1956)* for the proposition that compliance with these statutes is jurisdictional. The Court having ruled that it has no jurisdiction as to the County, the matter cannot be dismissed with prejudice solely upon that basis.

WILLIAM D. WOOD
By Counsel

"s/N Beville"
NORBORNE P. BEVILLE, JR.
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Counsel for Plaintiff

CERTIFICATE

I hereby certify that a true copy of the foregoing Exception was mailed to the City Council of Manassas and Manassas Regional Airport Administration Board, c/o Jerry W. Boykin, Redmon, Boykin & Braswell, 510 King Street, Suite 301, Alexandria, Virginia 22314, and The Board of Supervisors of Prince William County, c/o Robert B. Dickerson, Assistant County Attorney, 1 County Complex Court, Prince William, Virginia 22192-9201, this 29th day of August, 1997.

"s/N Beville"
Norborne P. Beville, Jr.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 3rd *day of* April, 1998.

William Doyle Wood, Appellant,

against Record No. 972489
Circuit Court No. 43132

City Council of Manassas, et al., Appellees,

From the Circuit Court of Prince William County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By: "s/ Wendy L. Tuck"

Deputy Clerk

Supreme Court, U.S.
FILED
AUG 3 1998
OFFICE OF THE CLERK

No. 98-47

In The

Supreme Court of the United States

October 1997 Term

WILLIAM DOYLE WOOD,

Petitioner,

vs.

THE CITY COUNCIL OF MANASSAS, VIRGINIA; BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY and THE MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

BRIEF IN OPPOSITION FOR RESPONDENT BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY

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QUESTIONS PRESENTED

1. Should this Court exercise its discretion to grant a Writ of Certiorari when the decisions of the Virginia courts rest on adequate nonfederal grounds and Wood presents no argument that the decisions of the Virginia courts conflict with the decisions of this Court, another state court of last resort or a United States court of appeals?

2. Should this Court exercise its discretion to grant a Writ of Certiorari concerning Wood's claim against Prince William County when his claim was dismissed consistent with the precedents of this Court?

3. Should this Court exercise its discretion to grant a Writ of Certiorari when the allegations of Wood's Complaint constituted merely preliminary activities that did not amount to a taking of the property?

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BASIS OF JURISDICTION

This Court does not have jurisdiction pursuant to Section 28 U.S.C. § 1257 because Wood's failure to present a claim to the Board was a jurisdictional matter that he has steadfastly refused to comply with, thereby denying the courts jurisdiction of his claim pursuant to state law.[1]

STATEMENT OF THE CASE

William Doyle Wood ("Wood") filed his Motion for Judgment, Petition in Inverse Condemnation and for Declaratory Judgment ("Motion for Judgment") on approximately June 19, 1997. The Motion for Judgment asserted a monetary claim against the County. On July 17, 1997 the County mailed a copy of its Demurrer and Plea in Bar ("Demurrer") to Wood. The Demurrer asked the court to dismiss Wood's suit because of Wood's failure to follow the requisite statutory jurisdictional procedures for bringing a monetary claim against the Board of County Supervisors of Prince William County ("County").

Section 15.1-554 VA Code Ann. provides that no action shall be maintained by any person against a county upon any claim or demand until such person shall have first presented his claim to the board of supervisors of such county. Moreover, Virginia case law provides that the claims procedure is a jurisdictional prerequisite to bringing any monetary claim against the County in court.[2]

Instead of complying with those jurisdictional procedures, Wood brought his case directly to the circuit court which

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1. VA Code Ann. Section 15.1-554.

2. *County of Chesterfield v. Town & Country Apartments & Townhouses*, 214 Va. 587, 203 S.E. 2d 117 (1974).

properly dismissed his Motion for Judgment because the court lacked jurisdiction to hear the matter pursuant to well established Virginia law. The Supreme Court of Virginia found no error in the circuit court's interpretation of the Virginia statutory and case law on that issue.

Contrary to Wood's Statement of the Case, Wood did not allege takings by conspiracy and physical invasion of his property. Wood's Motion for Judgment contained three counts; specifically inverse condemnation, nuisance and trespass. The Motion for Judgment did not contain counts for conspiracy and physical invasion. On appeal to the Supreme Court of Virginia, Wood again asserted that his claim was only in the three counts of nuisance, trespass and taking by inverse condemnation.

The Court also should note that the "low level overflights of [Wood's] abutting property" referenced in Wood's Statement of the Case were not alleged in his Motion for Judgment. Consequently, the circuit court had no such allegations before it when rendering its decision.

The circuit court dismissed the case against the City of Manassas ("City") and the Manassas Regional Airport Administration Board ("Airport Board") because the Motion for Judgment only alleged preliminary activities by the City and Airport Board that did not constitute a cause of action upon which relief could be granted The circuit court made no findings of fact, and considered only those allegations set forth in the documents before the court.

Although this matter was correctly dismissed as it pertains to the County because of Wood's refusal to comply with Virginia's established procedures for seeking compensation from counties, the Court also should note that the County's Demurrer

asked that Wood's Motion for Judgment be dismissed on several other grounds. The circuit court did not rule expressly on those arguments, presumably because of Wood's failure to take the steps necessary to provide the court with jurisdiction. Nonetheless, even if the circuit court had not granted the County's jurisdictional demurrer, the record clearly indicates that Wood's suit would have been dismissed as it pertained to the County for the same reason that the matter was dismissed as it concerned the City. Additional factors set forth in the County's Demurrer also would have required the circuit court to dismiss this frivolous suit. Specifically, the County does not own or control the airport which is the center of this suit[3], Wood lacks standing[4], the County has sovereign immunity, and Wood's suit is so vague that it is impossible to comprehend what County actions allegedly harmed him.

The Supreme Court of Virginia determined that there was no reversible error by the circuit court after reviewing the record of the case and considering all arguments concerning the appeal petition.

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3. As acknowledged in Wood's Motion for Judgment, the City owns and operates the airport. Further, the undisputed affidavit of the Mayor of the City of Manassas, which was admitted into evidence by the circuit court, provides that the County does not own or operate the airport. Rather, through its ownership of the Airport and its appointment of Airport Board members, the City controls the operations of the airport. The Airport Board was created by the City of Manassas as an advisory body, and the members of the Airport Board are appointed by the City.

4. The property formerly owned by Wood now belongs to another private property owner, just as it did when Wood filed this suit.

REASONS FOR DENYING THE WRIT

I.

WOOD'S CLAIM AGAINST THE COUNTY WAS DISMISSED ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

As set forth in Appendix A- 2 of Wood's Petition, the circuit court dismissed Wood's suit against the County for his failure to comply with the jurisdictional requirements of VA Code Ann. Sections 15.1-550 through 554.[5] This independent and adequate state law ground for dismissing Wood's suit against the County should prevent this Court from disturbing the judgment of the circuit court. *Berea College v. Kentucky*, 211 U.S. 45, 53 (1908).

II.

WOOD'S PETITION FAILS TO ESTABLISH A BASIS FOR THE EXERCISE OF THIS COURT'S DISCRETIONARY JURISDICTION PURSUANT TO RULE 10.

Rule 10 provides that the Court may exercise its discretion to grant a petition for writ of certiorari if a state court of last resort has decided an important federal question in a way that conflicts with another state court of last resort or of a United States court of appeals. Importantly, Wood cites no authority that challenges, or conflicts with, the authority of Virginia courts to dismiss matters when a party refuses to follow jurisdictional requirements. However, Wood appears to contend that the state

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5. Effective October 1, 1997, Sections 15.-550 through 554 were recodified without substantive change as VA Code Ann. Sections 15.2-1245 through 1248.

court decisions in this case are in conflict with this Court's decision in *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304 (1987). His assertion is without merit.

In *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 312, n.6 and 313 (1987), the Court did not decide the issue of whether any alleged actions would deny the property owner all use of its property. Instead, the Court accepted the state court assumption that a taking had occurred and focused on the issue of whether compensation was required for a temporary taking.

Moreover, contrary to the assertions of Wood, neither *Danforth v. United States*, 308 U.S. 271 (1939) nor *Agins v. Tiburon*, 447 U.S. 255 (1980) were eroded or overruled by *First Lutheran*. Instead, while discussing *Danforth* and *Agins*, the Court confirmed that the preliminary activities in each case did not work a taking even though such activities may have depreciated the value of property. *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 320 (1987).

In *Danforth v. United States*, 308 U.S. 271 (1939), the Court found that legislation authorizing the Secretary of War to initiate condemnation actions was a preliminary act. The Court found it inappropriate to sanction a taking based on preliminary activities because until an actual taking occurs, the condemnor can discontinue or abandon his efforts. *Id.* at 284. For example, the Court also noted that legislation may be modified, or appropriations may fail. *Id.* at 286. Moreover, the Court held that a reduction or increase in the value of the property by reason of legislation for, or the beginning or completion of, a project are incidentals of ownership. *Id.* at 285. Wood has alleged only similar preliminary activities in his Motion for Judgment and the Virginia courts properly found that such preliminary activities do not constitute a taking.

In *Agins v. Tiburon*, 447 U.S. 255 (1980), the Court confirmed a state court decision sustaining a locality's demurrer to a taking claim based upon preliminary activities of the locality. The Court reaffirmed *Danforth* and rejected the property owner's contention that a municipality's good faith planning activities, which do not result in successful prosecution of an eminent domain claim, do not burden property so as to constitute a taking. *Id.* 263, n.9. In the pending matter, Wood has merely alleged preliminary activities undertaken by the City as it studied various possibilities for the future of the airport. As correctly determined by the Virginia courts, these preliminary activities do not constitute a taking. As acknowledged by the Court in *Danforth* and *Agins*, governmental bodies may choose not to proceed with condemnations and do not have to compensate landowners just because the government may have contemplated taking such property.

Finally, this Court's rulings in *Danforth* and *Agins*, concerning preliminary activities, was not eviscerated by its ruling in *Lucas v. So. Carolina Coastal Council*, 505 U.S. 1003 (1992). The offending statute in *Lucas*, on its face, clearly prohibited virtually all use of the subject property. In contrast, the actions alleged by Wood are of a preliminary nature that manifest the City's careful review of its options.

III.

WOOD'S TAKING CLAIM IS PREMATURE BECAUSE HE HAS NOT USED AVAILABLE STATE INVERSE CONDEMNATION PROCEDURES NOR SOUGHT A FINAL DECISION CONCERNING THE APPLICABILITY OF LOCAL ORDINANCES AS REQUIRED BY *WILLIAMSON REGIONAL PLANNING COMM'N v. HAMILTON BANK.*

A. Wood Did Not Use Available Inverse Condemnation Procedures.

Any taking claim is premature until the claimant shows that the applicable inverse condemnation procedure is unavailable or inadequate, and until the claimant has utilized that procedure. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 197 (1985). Virginia's inverse condemnation procedures were available to Wood as set forth in VA Code Ann. Section 8.01-187. A jurisdictional prerequisite to those procedures is contained in VA Code Ann. Sections 15.-550 through 554. These statutes on their face, and as further confirmed by Virginia case law[6], require all claimants to formally present their monetary claims to the governing body of a county before granting the courts jurisdiction over such claims. Wood chose not to comply with that jurisdictional requirement, even after the County's Demurrer highlighted the requirement that he ignored when filing his suit against the County.

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6. *Nuckols v. Moore*, 234 Va. 478, 481-82, 362 S.E. 2d 715, 717 (1987) ("the language and context of [Sections 15.1-550 through 554] as well as their arrangement and sequence demonstrates a legislative intent to provide a comprehensive procedure for the presentation, auditing, challenge, defense, and judicial review of *monetary* claims asserted against a county."); and *County of Chesterfield v. Town & Country Apartments & Townhouses*, 214 Va. 587 at 590-591, 203 S.E. 2d 117 at 120 (1974).

Wood refused to use the established procedures available to assert his claim against the County. That refusal does not open the door to the federal courts, and Wood cannot create a federal claim by ignoring the available state process. Wood did not use the available inverse condemnation procedures and, consequently, his taking claim against the County is premature.

B. Virginia's Inverse Condemnation Procedures Were Adequate And Available To Wood.

Assuming *arguendo* that Wood actually used the available inverse condemnation procedures, his claim would still be premature because of an inability to show that Virginia's inverse condemnation procedures are inadequate.[7] Whether or not a state inverse condemnation remedy is "adequate" under *Williamson* is not determined by whether the landowner ultimately prevails or even by whether the state court judgment is sound. All that is required is that the party be afforded the opportunity for a full and fair hearing in state court. *Allen v. McCurry*, 449 U.S. 90, 101 (1980). The procedures under Sections 15.1-550 *et seq.* and 8.01-187 afforded Wood the opportunity for a full and fair hearing in state court, but he elected not to follow those procedures. His refusal to follow those procedures does not show that those procedures are inadequate.

C. Wood Did Not Obtain A Final Decision On The Applicability Of Ordinances To His Property.

Until a property owner obtains a final decision regarding the application of contested ordinances to his property, its claim is not ripe. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985). Wood nakedly

7. VA Code Ann. Section 8.01-187 has been held to constitute the available state remedy for regulatory inverse condemnation claims. *Northern Va. Law Sch. v. City of Alexandria*, 680 F. Supp. 222 (E.D. Va. 1988).

alleges that he had plans for a mixed-use planned unit development. However, Wood has not alleged that he was denied permission to undertake such uses. In his Motion for Judgment, Wood cryptically stated that the County "incorporated certain derived information into the County's policies and land use, building and zoning of the County". Wood's pleadings are not clear, but if he is alleging that some of these specific land use and zoning policies of the County are restricting the use of his property then it is incumbent upon him, or his successor, to seek a final decision regarding the application of such regulations to his use of his property. Having failed to seek such a decision, a claim by him or his successor is not ripe.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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No. 98-47

In The

Supreme Court of the United States

October Term, 1997

WILLIAM DOYLE WOOD,

Petitioner,

vs.

THE CITY COUNCIL OF MANASSAS, VIRGINIA; BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY and THE MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

BRIEF IN OPPOSITION FOR RESPONDENTS THE CITY COUNCIL OF MANASSAS, VIRGINIA AND THE MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to this proceeding.

Issues regarding whether the plaintiff below had standing to sue the parties he did were raised as part of defendants' Plea in Bar and Demurrer. The Manassas Regional Airport Administrative Board is made up of individuals appointed by the City Council. The City Council of the City of Manassas, Virginia and the Airport Board are immune from prosecution in their individual capacities under the doctrine of sovereign immunity. *Messina v. Burden*, 223 Va. 301, 321 S.E. 2d 657 (1984). These issues were not decided by the Circuit Court.

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STATEMENT OF THE CASE

The Petitioner, William Doyle Wood, was formerly the owner of property located in Prince William County, Virginia, near the municipal airport for the City of Manassas. In February 1996, Wood filed a Bill of Complaint for declaratory judgment, injunctive and other relief in the Circuit Court for Prince William County, Virginia. This suit was filed against the City Council of Manassas only. The City Council filed a Demurrer to the Complaint and prior to its being heard by the Circuit Court, Wood nonsuited the case.

Subsequent to that time, the property in question was foreclosed upon by Wood's creditors and he no longer owned the property at the time that the action, which is the subject matter of this Petition, was filed.

Wood initiated a Motion for Judgment, Petition for Inverse Condemnation and for Declaratory Judgment in June 1997 against the City Council of Manassas, Virginia, the Board of Supervisors of Prince William County and the Manassas Regional Airport Administration Board. This suit alleged, among other things, that activity undertaken by the City Council to determine whether the airport runway should be expanded constituted a taking of his property. The activity undertaken included various studies relating to the creation of a noise overlay district and the initiation of the Federal Aviation Administration application process to determine whether such an extension of the runway was feasible, warranted or made economic sense.

Wood claimed that such activity constituted a taking of "all use" of the property which amounted to inverse condemnation entitling him to compensation.

The demurrer of the City Council of Manassas and the Manassas Regional Airport Administration Board and the demurrer of Prince William County were granted and the case was

dismissed. Wood petitioned the Supreme Court of Virginia for a Writ granting Wood's appeal to that court. On April 3, 1998, the Virginia Supreme Court declined to grant the requested Writ. This Petition for Writ of Certiorari follows.

A. The Petition Fails To Disclose A Critical Element Regarding The Disposition Of This Matter.

The Petition does not disclose to this Court that Wood was not the owner of the property in question at the time he brought the present suit in the Circuit Court for Prince William County, Virginia. Accordingly, it was the position of the defendants in the actions below that Mr. Wood lacked standing to bring an inverse condemnation proceeding. The general rule of Virginia is that only the owner of a parcel of property has standing to claim that the property has been taken from him. *Virginia - Carolina Rwy Co. v. Booker,* 99 Va. 633, 39 S.E. 591 (1901); *Jones v. Miller,* 2 Va. Dec. 232, 23 S.E. 35 (1882). Wood admits in his motion for judgment that he was unable to make the mortgage payments on the property and as a consequence, the property was foreclosed upon. (Motion for Judgment para. 53).

This fact was set out in the Respondents' brief at both the Circuit Court level and before the Virginia Supreme Court. It was a factor presumably relied upon by both courts in their decisions dismissing Wood's suit and appeal.

B. Petitioner's Reliance On *First Lutheran Church v. Los Angeles* Is Misplaced. The Preliminary Activities Undertaken To Study The Feasibility Of Expanding The Airport Did Not Constitute A Taking That Was Either Temporary or Permanent.

The case presented by Petitioner in the instant matter is vastly different from the factual context within which this Court reviewed *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 104 S. Ct. 2378, 96 L. Ed. 2d 250 (1987), despite

Petitioner's assertions to the contrary. In that case, this Court determined that the Los Angeles County ordinance which prohibited the church from rebuilding on a flood plain was a compensable taking. The Court found that there was at least a temporary taking because all use of the property was prohibited by the ordinance, even though the ordinance was later repealed. *Id.* 482 U.S. at 321-322.

In the instant case, the Petitioner was not deprived of any use of his property because all the City of Manassas did was engage in preliminary studies to determine the feasibility of expanding the airport. Wood's use of his property continued despite his conclusory allegations to the contrary. The activity undertaken is squarely within the ruling in *Danforth v. United States*, 308 U.S. 271, 60 S. Ct. 231, 84 L. Ed. 240 (1939) and *Agins v. Tiburon*, 447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980) which determined that preliminary activity designed to determine the feasibility a possible future exercise of eminent domain did not constitute a taking. In *Agins*, this Court held that precondemnation activities, including the initiation of eminent domain proceedings did not amount to a taking. The Court went on to state:

> Even if the appellants' ability to sell their property was limited during the pending of the condemnation proceeding, the appellants were free to sell or develop their property when the proceedings ended. Mere fluctuations in value during the process of governmental decision making, absent extraordinary delay are "incidents of ownership. They cannot be considered a 'taking' in the constitutional sense." (citations omitted)

Id. 447 U.S. at 263, n.9.

REASONS FOR DENYING THE WRIT

The petitioner's naked, unsupported and conclusory allegations in his Motion for Judgment that he was deprived of all use of his property are not sufficient to escape dismissal because the activities undertaken by the City Council of Manassas and the Airport Board appointed by it were preliminary in nature and the facts substantiating this determination were fully set out in the statement of facts in Wood's initial pleadings. That Wood alleged that the preliminary activity constituted a "taking" is not sufficient to create a viable cause of action where the facts in the Motion For Judgment clearly indicated that there was no taking of property. An allegation which merely states a conclusion at law is demurrable under Virginia Law. *Arlington Yellow Cab v. Transportation, Inc.*, 207 Va. 313, 149 S.E. 2d 877 (1966). The Circuit Court properly held that the activities in question could not possibly amount to a taking despite the conclusory allegations. See, *Agins v. Tiburon, supra. First Evangelical Lutheran Church v Los Angeles* is clearly not applicable to the fact pattern set forth in this matter.

Moreover, that Wood failed to make his mortgage payments and therefore caused the foreclosure of his property cannot be laid at the feet of the City of Manassas. Had Wood held his property and made the payments he was required to make, regardless of any activity taken in regard to the airport, he would have been eligible to recover in condemnation proceedings if the City of Manassas ever determined to expand the airport. This he did not do and his failure to act cannot become the responsibility of local government. *See Board of Supervisors of Prince William County v. Omni Homes*, 253 Va. 59 481 S.E. 2d 460 (1997).

CONCLUSION

For the reasons stated herein and for those set forth by Prince William County in its Brief In Opposition, which are incorporated herein by reference, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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In The

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WILLIAM DOYLE WOOD,

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CITY COUNCIL OF MANASSAS, VIRGINIA,

and

THE BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY,

and

MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

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APPLICABLE STATUTES

§ 18.2-499. Combinations to injure others in their reputation, trade, business or profession; rights of employees. – A. Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be jointly and severally guilty of a Class I misdemeanor. Such punishment shall be in addition to any civil relief recoverable under § 18.2 – 500. B. Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection A of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection A. C. This section shall not affect the right of employees lawfully to organize and bargain concerning wages and conditions of employment, and take other steps to protect their rights as provided under state and federal laws. (Code 1950, § 18.1 – 74.1.1; 1964, c. 623; 1972, c. 469; 1975, cc. 14, 15; 1994, c. 534.)

§ 18.2-500. Same; civil relief; damages and counsel fees; injunctions. (a) Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel; and without limiting the generality of the term, "damages"

shall include loss of profits. Such counsel shall in no case receive any other, further or additional compensation except that allowed by the court and any contract to the contrary shall be null and void. (b) Whenever a person shall duly file a bill in chancery in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-499 and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' and defendants' counsel. (Code 1950, § 18.1-74.1:2; 1964, c. 623; 1975, cc. 14, 15.)

STATEMENT OF THE CASE

The brief in opposition of the County misrepresents the facts alleged by the petitioner, William Doyle Wood, in three respects. The brief states first that William Doyle Wood did not allege low level overflights. While the original pleading did not use these specific words it did allege in paragraph 64 an increased number of airplanes using the airport and an increased level of noise. This would obviously constitute low level flights. Also alleged was the introduction of helicopter traffic which again obviously constitutes low level overflights.

The brief further alleges that the petition did not allege a conspiracy. Paragraph 22 alleges that the acts violated Section 18.2-499 and 18.2-500 of the Code of

Virginia which prohibit a conspiracy to harm a person in his trade or profession.

Lastly the County denies William Doyle Wood alleged a "physical invasion." Both paragraphs 59e and 94e contain the specific words "physical invasion."

The County has thus grossly misrepresented the petitioner's pleading in order to deny the petitioner a hearing on the merits and effect its unlawful taking of his property. This is in line with its position that the acts were only preliminary activities. If so, William Doyle Wood, was not allowed a hearing on whether they constituted a taking.

As to the brief by the City there was no evidence William Doyle Wood was unable to make mortgage payments but that the property was rendered useless and ultimately foreclosed upon and sold.

ARGUMENT

The County and City have continued to misrepresent the petitioner's case in this Court as they have throughout these proceedings in order to deny him both his property rights and even a day in court.

If the County wished this matter treated as a claim or account they could have done so when suit was filed to eliminate the necessity of a court proceeding.

However, all defendants have portrayed these activities as anything but an unlawful taking to deny William

Doyle Wood his constitutional rights to be compensated and even to a hearing on the matter.

Respectfully submitted,

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